

August 31, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

RE: Common Carrier Bureau Seeks Comment on
Proposed Change to Verizon's Merger
Performance Plan
CC Docket No. 98-184
DA: 01-1790

Dear Ms. Salas:

Enclosed please find an original and one (1) copy of Comments of the Pennsylvania Office of Consumer Advocate. Please also note that these Comments have been filed with the Commission **electronically**.

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosure

cc: All Parties of Record
Mark Stone/Common Carrier Bureau
Debbi Byrd/Common Carrier Bureau
International Transcription Service, Inc.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

COMMON CARRIER BUREAU SEEKS : CC Docket No. 98-184
COMMENT ON PROPOSED CHANGE TO: DA 01-1790
VERIZON'S MERGER PERFORMANCE :
PLAN :

I hereby certify that I have this day served a true copy of the foregoing document,
Comments of the Office of Consumer Advocate, upon parties of record in this proceeding. Dated this 31st
day of August, 2001.

Respectfully submitted,

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FEDERAL COMMUNICATIONS COMMISSION**

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**COMMENTS OF
THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE**

I. INTRODUCTION

The Pennsylvania Office of Consumer Advocate ("PA OCA") submits these Comments in response to the above-captioned Public Notice released by the Federal Communications Commission ("FCC") on August 1, 2001. The PA OCA is designated by Pennsylvania law to represent utility consumers before the Pennsylvania Public Utility Commission ("PA PUC"), federal agencies and state and federal courts. The PA OCA is actively involved in representing consumer interests in telecommunications issues in these venues and is, therefore, familiar with the issues contained in this Public Notice.

Through this Public Notice, the FCC seeks comments on the request of Verizon Communications, Inc. ("Verizon") to the FCC's Common Carrier Bureau to remove Illinois, Ohio and Pennsylvania from the federal Carrier-to-Carrier Performance Plan pursuant to the Merger Conditions established in conjunction with the approval of the merger of the former Bell Atlantic Corporation and GTE Corporation which formed Verizon. See, Public Notice at 1-2.¹ Specifically, the Public Notice indicates that Verizon states that the Illinois, Ohio and Pennsylvania commissions have adopted performance reporting plans that are comprehensive. Id. at 2. Under its proposal, Verizon would neither report performance data to the Commission nor make voluntary payments to the United States Treasury for performance in those states. Id.

¹ Citing, Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket No. 99-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, Appendix D, Attachment A (2000)("FCC Merger Order").

The PA OCA files these Comments in opposition to Verizon's request to remove Pennsylvania from the federal Carrier-to-Carrier Performance Plan. As discussed below, Verizon should continue to publicly file performance data pursuant to the FCC Merger Order demonstrating its progress in opening its local markets to competitors. Pennsylvania's state performance reporting requirements alone are not sufficient to gauge Verizon's performance in many key performance measurements.

In particular, the PA OCA submits that there are several individual performance measurements that are not reported in the state performance plan that are reported in the federal Carrier-to-Carrier Performance Plan. Furthermore, Verizon Pennsylvania's performance reporting requirements in Pennsylvania are applicable only to portions of the Verizon territory.

As such, Verizon should continue to be required to file performance reporting plans pursuant to the FCC Merger Order. Moreover, the PA OCA submits that the performance data should be posted on the FCC web site in a manner that is readily understandable to the public.

II. COMMENTS

A. Introduction.

As indicated in the Public Notice, the FCC Merger Order requires Verizon to publicly file performance data demonstrating its progress in opening its local markets to competitors as part of the federal Carrier-to-Carrier Performance Plan. Public Notice at 1. Specifically, Verizon reports 17 performance measurements each month regarding its provision of retail services to competitive local exchange carriers ("CLECs"). In particular, Verizon reports in the areas of operations support systems, provisioning, maintenance and repair, billing and collocation and makes payments to the United States Treasury if Verizon's performance falls below certain benchmarks. Id.²

By letters to the Chief of the FCC's Common Carrier Bureau dated July 17 and 19, 2001 respectively, Verizon has stated that the Illinois, Ohio and Pennsylvania commissions have adopted comprehensive performance reporting plans. Therefore, Verizon requests that it neither report performance

² Citing, FCC Merger Order, at ¶¶8-16.

data to the FCC nor make voluntary payments to the United States Treasury for performance in those states.

The PA OCA submits that the Chief of the Common Carrier Bureau should not grant Verizon's request with respect to Pennsylvania, but, rather, should continue to require Verizon Pennsylvania to report data under the federal Carrier-to-Carrier Performance Plan.

B. Verizon Pennsylvania, Inc. Should Continue To File Performance Data As Part Of The Federal Carrier-To-Carrier Performance Plan Because Some Of The Metrics Measured Under The Federal Plan Are Not Measured Under The State Plan.

The PA OCA submits that there are specific provisions of the federal Carrier-To-Carrier Performance Plan that are not contained in the Pennsylvania Carrier-to-Carrier Reports.³ This information would be lost if Verizon Pennsylvania no longer had to report that data as the Company currently seeks. The Pennsylvania Reports contain many of the same metrics as the federal Carrier-to-Carrier Performance Plan as both require the same categories of metrics. However, there are several specific measurement standards that are included only in the federal Carrier-to-Carrier Performance Plan and not in the Pennsylvania Carrier-to-Carrier Reports. Therefore, if the reporting of these metrics were eliminated at the federal level, the information would not be available for Verizon Pennsylvania at all. The excluded metrics include OR-2-02, OR-5-03, and NP-2 measures of Collocation Performance.

Sub-metric OR-2-02 measures the percentage of on time LSR (Local Service Request) rejections that are flowed through the system. The metric is derived by dividing the "number of electronic rejects sent where reject date and time less submission data and time is less than 2 hours for specified product" by the "total number of flow-through LSRs rejected for specified product." FCC Merger Order, Attachment A-1a, OR-2-02. The OR-2-02 sub-metric is not reported in the Pennsylvania Carrier-to-Carrier

³ Joint Petition of Nextlink Pennsylvania, Inc., RCN Telecommunications Services of Pennsylvania, Inc., Hyperion Telecommunications, Inc., ATX Telecommunications, Focal Communications Corporation of Pennsylvania, Inc., CTSI, Inc., MCI Worldcom, e.Spire Communications, and AT&T Communications of Pennsylvania, Inc. for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc. ("Pennsylvania Carrier-to-Carrier Reports" or "Performance Metrics Order") at Docket No. P-00991643 (November 4, 1999).

Reports.

Sub-metric OR-5-03 measures the percentage of flow through achieved. The definition of the metric is that “% of valid orders received through the electronic ordering Gateway that are designed to flow through and actually flow through, but excluding those orders that do not flow due to CLEC errors or a pending order status.” The metric is achieved by dividing the “count of orders that flow through...for specified product” by the “count of flow through eligible orders.” FCC Merger Order, Attachment A-1a, OR-5-03. The sub-metric OR-5-03 is not included in the Pennsylvania Carrier-to-Carrier Reports.

Finally, an entire category of metrics is not being reported in Pennsylvania, but is being reported to the FCC. The Pennsylvania Carrier-to-Carrier Reports state that the NP-2 Collocation Performance metric will be based “upon the provisions of [Verizon’s] Collocation Tariff as approved by the Commission following the completion of the Commission’s collocation proceeding.” Pennsylvania Carrier-to-Carrier Reports (January 2001). The federal Carrier-to-Carrier Performance Plan NP-2 Collocation Performance metric category measures the “average number of business days between order application date and completion or between order application date and response (notification of space availability) date. The application date is the date that a valid service request is received.” FCC Merger Order, Attachment A-1a, NP-2. This metric measures how long it takes Verizon to complete a request for physical collocation cages or virtual collocation arrangements. The physical collocation performance standards require that a notification of space availability be made within 8 days, that the collocation interval be within 76 days, and that this standard be met 95% on time. Id. The virtual collocation standards require that a notification of space availability be made within 14 days, that the collocations interval be within 105 days, and that the standard be met 95% on time. Id.

There are four sub-metrics which measure collocation performance at the FCC. Metric NP-2-01 measures the percentage of on time responses to requests for physical collocation cages. Id. Metric NP-2-02 measures the percentage of on time responses to requests for virtual collocation arrangements. Id. Metric NP-2-05 measures the percentage of on time physical collocation, and Metric NP-2-06 measures the percentage of on time virtual collocation. Id. If the federal Carrier-to-Carrier Performance Plan reporting requirements were eliminated, the PA OCA submits that Verizon Pennsylvania

would no longer be required to report on collocation performance. Elimination of reporting requirements for sub-metrics OR-2-02, OR-5-03, and metric NP-2 at the FCC level would make Verizon's metric reports less comprehensive.

C. Verizon-Pennsylvania, Inc. Should Continue To File Performance Data As Part Of The Carrier-To-Carrier Performance Plan So That Verizon's Quality of Service Does Not Decline And Competition Does Not Suffer.

The PA OCA submits that granting Verizon Pennsylvania's request to remove the performance reporting requirements under the federal Carrier-to-Carrier Performance Plan is premature and may have a negative impact on the quality of service provided to consumers of Verizon Pennsylvania's services both in its provision of wholesale services to CLECs and its provision of retail services to its customers.

In particular, the PA OCA submits that the level of competition for the provision of local exchange service in Pennsylvania is not yet at the point where Verizon Pennsylvania's treatment of its competitors through its provision of wholesale services need not be carefully monitored. By making the request to the Common Carrier Bureau to remove Pennsylvania from the federal Carrier-to-Carrier Performance Plan, Verizon Pennsylvania is overestimating the extent to which the problems experienced by competitors no longer require regulatory review. The PA OCA submits that Verizon Pennsylvania should not be removed from these reporting requirements because it is important to carefully monitor the Company's treatment of CLECs who seek to provide service in Verizon Pennsylvania's territory. Carefully monitoring the Company's treatment of CLECs will further ensure that the benefits of true, meaningful and irreversible competition will be passed on to consumers in the form of lower prices, better quality of service and greater options for service.

As such, the PA OCA submits that Verizon should continue to report data pursuant to the federal Carrier-to-Carrier Performance Plan so that Verizon's quality of service to CLEC's can be carefully monitored.

D. Verizon Pennsylvania Should Continue To File Performance Data As Part Of The Carrier To Carrier Performance Plan Because Pennsylvania Has No Metric Plan Applicable To Verizon North.

The PA OCA submits that Verizon's requested waiver should be denied because the current Pennsylvania performance plan applies only to the Verizon territory that comprises the former Bell Atlantic service territory. This is so because the Performance Metrics Order, see footnote note 3, supra, was issued prior to the FCC Merger Order. As such, there is no federal or state performance reporting data currently in place for the former GTE North territory in Pennsylvania which encompasses approximately 710,000 access lines statewide. Prior to the FCC Merger Order, GTE North was the second largest incumbent local exchange carrier in the Commonwealth. Therefore, granting Verizon's request to waive all federal Carrier-to-Carrier Performance Plan reporting requirements would eliminate completely any reporting of these measurements in this large portion of Pennsylvania.

As such, the PA OCA submits that Verizon Pennsylvania should continue to file performance data as part of the federal Carrier-to-Carrier Performance Plan because such reporting in Pennsylvania represents the only data reported for the former GTE North territory.

E. Verizon Should Continue To File Performance Data Under The Federal Carrier-To-Carrier Plan Because Verizon Should Not Be Allowed To Waive This Commitment Just One Year After Entering In To It.

The PA OCA also submits that Verizon should not be removed from its continuing federal reporting obligations because such commitments were negotiated as part of the FCC Merger Order. As such, Verizon agreed to report its performance data regarding its provision of wholesale and retail services as part of its ability to consummate its merger. Verizon should not be permitted to enter into this agreement to report performance data as part of its obligations under the FCC Merger Order only to request just one year later a waiver of such reporting requirement based on its application to provide long distance service in individual states under Section 271 of the Telecommunications Act of 1996.⁴ This is particularly so as Verizon knew at that time it entered into such a commitment that it would be seeking Section 271 approval in the near future.

Therefore, the PA OCA submits that Verizon should not be allowed to withdraw from its

⁴ 47 U.S.C. §271.

commitments to report performance data one year later based on events that clearly could have been foreseen at the time it entered into the commitment.

F. Conclusion.

The PA OCA submits that the Chief of the Common Carrier Bureau should reject Verizon's request to remove Pennsylvania from the federal Carrier-to-Carrier Performance Plan reporting requirements of the FCC Merger Order. There are some individual performance metrics that are reported in the federal Carrier-to-Carrier Performance Plan that are not reported in the Pennsylvania Carrier-to-Carrier Reports. Additionally, Verizon Pennsylvania's reporting to the PA PUC covers only a portion of the Verizon territory in Pennsylvania. No reporting is made to the PA PUC concerning Verizon North operations. As such, removing Verizon's obligation to report the metrics to the FCC will result in the loss of critical information regarding the Company's performance.

The PA OCA submits that Verizon Pennsylvania's failure to report its performance could result in a decrease in service quality provided by the Company. Verizon is overestimating the extent to which the problems experienced by competitors no longer require regulatory review. Rather, the performance reporting requirements remain a necessity and Verizon's request should be rejected.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully requests that the Federal Communications Commission reject Verizon's request to remove Pennsylvania from the federal Carrier-to-Carrier Performance Plan. The PA OCA submits that it is critical for the public to have access to information regarding Verizon's performance quality and that current Pennsylvania reporting requirements may not provide for sufficiently reported publicly available data on these important issues. As such, the OCA submits that Verizon should continue to be required to file performance reporting plans pursuant to the FCC Merger Order and that such reports should be publicly available in a readily available format.

Respectfully submitted,

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Date: August 31, 2001

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